both parties move for a directed verdict and do nothing more, they thereby impliedly waive a trial by jury and confer upon the court the power to determine matters both of law and fact. *Empire State Cattle Co.* v. *A., T. & S. F. Ry. Co.,* 210 U. S. 1, reversing 147 Fed. 457; *Beuttell* v. *Magone,* 157 U. S. 154; *Patty* v. *Salem Flouring Mills Co.,* 53 Ore. 350; *Lindquist* v. *Northwestern Port Huron Co.,* 22 S. D. 298; *Home Fire Ins. Co.* v. *Wilson,* 159 S. W. (Ark. 1913) 1113. The rule as applied in these cases has, however, the modification that if either party on denial of his motion makes a special request to have certain matters of fact determined by the jury, this rebuts the implied presumption of waiver, and such matters must be submitted to the jury. *Minahan* v. *Grand Trunk,* 138 Fed. 37; *Kinner* v. *Whipple,* 198 N. Y. 585; *Duncan* v. *Great Northern,* 17 N. D. 610; *Victoria First National Bank* v. *Hayes,* 64 Oh. St. 100. It is said in *Minahan* v. *Grand Trunk, supra,* "The fact that each party asks for a peremptory instruction to find in his favor does not submit the issues of fact to the court so as to deprive the party of the right to ask other instructions, and to except to the refusal to give them, nor does it deprive him of the right to have questions of fact submitted to the jury if issues are joined on which conflicting evidence has been offered." It is submitted that the rule which permits a resort to the jury in all cases where there are disputed facts is the more logical for the reason that a motion for a directed verdict is in effect a demurrer to evidence. As such it would not seem to imply that the party is willing to have the court pass upon the weight of the evidence, since in considering the motion the court cannot look to any of the evidence introduced by the moving party which is favorable to him.

WILLS—LEGACY—DIVIDENDS ON CORPORATE STOCK.—The stock of a corporation was given in trust to pay the income to the testator's widow for life, with remainder to a daughter absolutely. After the testator's death the corporation declared an extra dividend of 100 per cent. on the capital stock, for the payment of which dividend securities purchased by the corporation out of its cumulative profits were sold. *Held,* that such extra dividend was not income but that it constituted part of the corpus of the trust estate. *Foard* v. *Safe Deposit & Trust Company of Baltimore* (Md. 1914), 89 Atl. 724.

There are three conflicting rules upon the question of how distributions made by a corporation during the continuance of a life estate should be apportioned between the life tenant and the remainderman. The so-called Massachusetts rule is that stock dividends declared out of earnings accumulated during the testator's lifetime go to the remainderman, and cash dividends go to the life tenant. *Minot* v. *Paine,* 99 Mass. 108; *Gibbons* v. *Mahon,* 136 U. S. 549; *Smith* v. *Dana,* 77 Conn. 543; *De Koven* v. *Alsop,* 205 Ill. 309. This rule is somewhat difficult of application for the reason that before it can be applied it is necessary to ascertain whether the distribution by the corporation is from earnings or whether it represents a reduction or change of the form of capital. The Pennsylvania rule, the one followed by the principal case, is that both stock and cash dividends are appor-

tioned between the life tenant and the remainderman according as they represent earnings before or after the creation of the trust fund. *Earp's Appeal,* 28 Penn. 368; *Soehlein* v. *Soehlein,* 146 Wis. 330; *Goodwin* v. *McGaughey,* 108 Minn. 248. The difficulty in the application of this rule arises in attempting to ascertain when the money which entered into the dividend was earned. The New York and Kentucky rule is that dividends, whether stock or cash, are non-apportionable, and must be considered as accruing in their entirety as of the date when they are declared, and therefore if declared during the life tenancy, they go to the life tenant. *McSouth* v. *Hunt,* 154 N. Y. 179; *Hite* v. *Hite,* 93 Ky. 257.